

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:20 CR 143 JAR
)	
ROBERT HARRISON,)	
)	
Defendant.)	

**DEFENDANT'S MOTION IN LIMINE TO PROHIBIT THE USE AT TRIAL OF ANY
JAIL CALLS WITHOUT A PROPER FOUNDATION**

NOW COMES Defendant, ROBERT HARRISON, by and through undersigned counsel, and respectfully moves this Honorable Court to pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Fed. R. Evid. 901(a) and (b) and 404(b) and respectfully request that this Court issue an Order in limine that the Government not present or seek to present evidence from any telephone calls in this matter without first making the proper foundation. As grounds for this request, Defendant states the following:

Mr. Harrison is charged with one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g).

Mr. Harrison has reason to believe the Government may seek to admit recordings from the St. Louis City Justice Center and the Ste. Genevieve County Jail referenced in the discovery.

The Government will likely allege that these recordings include the voice of Mr. Harrison.

The interpretations of portions of the contents of the recordings require speculation as to the meaning of the conversations.

These calls may reference uncharged crimes and bad acts. These uncharged crimes and bad acts are prejudicial and not probative to the instant offense in violation of Federal Rules of Evidence 403 and 404(b).

The Government should be prohibited from admitting any of the phone recordings from the St. Louis City Justice Center without first laying the proper foundation.

The proponent of an audio recording carries the burden of demonstrating a recording is sufficiently authentic to be admitted into evidence. Fed. R. Evid. 901 sets forth the stringent requirements for authentication prior to the admission of any recording. Fed. R. Evid. 901(b) lists examples of what satisfies the requirements. These include comparisons by an expert witness, an opinion identifying a person's voice - whether heard firsthand or through mechanical or electronic transmission or recording, or self - authentication.

The Defendant's right to a fair trial under the Fifth Amendment, a fair and impartial jury under the Sixth, the right to confront the witnesses against him under the Eighth and the right to due process under the Fourteenth mandate that the government lay the proper foundation for the phone recordings obtained from the St. Louis City Justice Center and Ste. Genevieve County Jail.

The Government must meet the prerequisites for admission under both Constitutional and federal evidentiary guidelines. The Government must authenticate the identification of the speakers. It must prove that the device used to make the recording was properly working, that it was maintained and operated competently. It must show the manner of the preservation of the recording, and that changes, additions or deletions have not been made.

The Government will not be able to lay the proper foundation for the telephone recordings because telephone calls made at the City of St. Louis Justice Center and the Ste. Genevieve County Jail do not meet the threshold for admission under the criteria outlined above.

WHEREFORE the Defendant moves this Honorable Court to issue an Order in limine denying the admission of recorded telephone calls at trial based on upon the above.

Respectfully submitted,

/s/ Mohammed G. Ahmed
Mohammed G. Ahmed
Bar No. 6285612 IL
Assistant Federal Public Defender
1010 Market Street, Suite 200
St. Louis, Missouri 63101
Telephone: 314-241-1255
Fax: 314 241 3177
E-Mail: Mohammed_Ahmed@fd.org
Attorney for Defendant

CERTIFICATE OF SERVICE

Assistant Federal Public Defender Mohammed G. Ahmed certifies that he filed the foregoing electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Assistant United States Attorney, Natalie Warner, Kourtney Bell, and Rodney Holmes.

Dated October 27, 2021.

/s/ Mohammed G. Ahmed